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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Applications of WorldCom, Inc. and)	
MCI Communications Corporation for)	CC Docket
Transfer of Control of MCI Communications)	No. 91-211
Corporation to WorldCom, Inc.)	97-

Comments/Reply Request for Review of "Non-Public" Materials
filed by Inner City Press/Community on the Move

March 20, 1998

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Inner City Press/Community on the Move and its members and affiliates (collectively, "ICP"), pursuant to the February 27, 1998 Order, DA 98-384, issued by the Common Carrier Bureau in the above-captioned proceeding, submits these further comments / reply in opposition to the proposed combination of WorldCom, Inc. and MCI Communications Corporation. This is also a formal request for review of emerging "non-public" materials, for an extended pleading cycle, and for an evidentiary hearing.

While troubling issues exist as to this proposal's effect *inter alia* on (1) reduced entry into local telephone markets, particularly the market in low income communities of color, (2) universal service, including telephone and internet, and (3) competition in long distance telephone

markets (see, e.g., Quest's recent proposal to acquire LCI), particularly in the residential consumer market, -- it is the internet issues that most clearly demand an extended pleading cycle, an evidentiary hearing, and the provision of "non-public" material to the protestants including ICP.

First, to supplement ICP's January 2, 1998, Petition to Deny on the issues of reduced entry in local telephone markets: the duplicity of WorldCom's assurances to the FCC that it will focus on the residential market is widely noted. See, e.g., S. Schiesel, Two Corporate Cultures Meet in MCI-WorldCom Merger, ("Two Corporate Cultures"), New York Times, March 11, 1998, at D1, quoting Legg Mason telecom analyst Scott Cleland that "[t]his is a classic case of a company's telling Wall Street one thing and Washington something else... Shareholders think that they won't spend a lot of money on the residential market, and Washington expects them to do just that."

As to the internet competition issues: ICP believes it is clear that the appropriate product market for review on this issue is the internet BACKBONE market, and believes that the Commission and DOJ are adopting this position.¹ Given UUNet's requirement that its peering agreements be confidential, it is difficult for the affected public to assess and comment on this issue; the Commission should collect and release this information.

For the record, more and more of the internet's traffic is bypassing the "public" Network Access Points ("NAPs")²

¹ See also, Communications Daily of March 13, 1998, S.C., VA Attorneys General Call Merged MCI-WorldCom Threat to Competition.

² The reason? See, e.g., Business Wire of March 11, 1998, Major Outages Degrade Performance by 20% from January to February: "overall Internet performance the first two week of February 1998 degraded 20% from January's levels,

and is traveling among ISPs/backbone providers under peering agreements. The proposed combined entity would have a dominant market position,³ and has already shown a willingness to use its position to demand unprecedented payments for peering,⁴ and then to cloak these peering agreements behind confidentiality agreements.

One of WorldCom's and MCI's main arguments⁵ is that there are low barriers to entry (in the ISP market and, WorldCom implies, in the backbone market). Due to less than fluid IP portability and other factors⁶ demonstrated by other commenters, this is hardly true now -- and would be less true if this combination were allowed to go forward. At present, ISPs can start up and peer with others; a combined WorldCom-MCI, however, could and would raise peering prices (which in turn would be passed on to retail consumers), and

primarily due to outages at the MAE-West Network Access Point....".

³ For further example, Two Corporate Cultures, *supra*, quotes Jeff Keefe, associate professor at Rutgers University's management school, that "[i]f you believe that there is a separate Internet backbone provider market, WorldCom-MCI would control somewhere between 48 and 68 percent of that market."

⁴ See, e.g., Computer Reseller News of March 16, 1998: "John Sidgmore, president and chief executive of UUNet... has said the company will charge smaller-sized carriers to peer with the UUNet backbone."

⁵ WorldCom's other argument is that GTE is "orchestrating" opposition to the merger (see, e.g., Washington Telecom Newswire of March 12, 1998, quoting an MCI spokesperson). This diversionary argument is absurd, as to ICP and numerous other protestants. See *infra*.

⁶ For example, Gordon Cook, author of Cook Report on the Internet, has said that the cost of entering backbone business is already skyrocketing, that the cost of meeting technical requirements bigger companies have set for peering is \$500,000 per month and rising. See Communications Daily of March 16, 1998, which also quoted the CEO of Fiber Network Solutions that Sprint "is talking about" levying fee of up to \$50,000 per month (for peering).

has indicated it might begin charging for backbone use "by the byte."

The irony (and need for action) is inescapable: while Congress, the courts and the FCC have been trying to make telephone services more competitive and less concentrated, the infrastructure of most future communications threaten to be irrevocably concentrated by a combined WorldCom-MCI. ICP believes, as perhaps the Commissioners do, that Congress should address this issue -- in the interim, however, the FCC must closely scrutinize this proposal, under its existing public interest standard, and should (1) provide the applicants' "non-public" material to the protestants, (2) schedule an evidentiary hearing, (3) substantially extend the pleading cycle, and (4) on the current record, deny this proposed combination.

* * * *

ICP filed a timely petition to deny on January 2, 1998. While ICP appreciates that the Bureau has allowed a second round of public comments in this proceeding, the evidentiary record in this docket is nowhere near complete. This cannot legitimately be the last opportunity for public comment. The Department of Justice and the European Union have both initiated more detailed reviews of the proposal. See, e.g., Wilke and Sandberg, Worldcom, MCI Probe is Widened, Wall St. J., March 10, 1998, at A3. Meanwhile, the FCC has yet to release even WorldCom's and MCI's initial Hart-Scott-Rodino filings to any protestant (as WAS done in the Bell Atlantic/NYNEX proceeding, 12 FCCC Rcd 19985 (1997)), and as should be done here).

We note, and join in, the similar requests of various other commenters / protestants:

--Telstra's March 13 submission, at 2 ("the law requires that an adequate opportunity for public comment be provided after, not before, interested parties are able to inspect all relevant documents including the HSR documents which the FCC obtains in due course from the DOJ") (emphasis in original);

--Bell Atlantic's March 13/16 submission, at 1 ("[t]he commenting parties can be expected to file comprehensive comments only after reviewing the documents the Commission makes available");

--Rainbow/PUSH's March 13 submission, at 13-14 ("the public should be offered a reasonable opportunity to comment on the results of that investigation") (presumably meaning the DOJ's, as well as the FCC's, investigation(s));

--Simply Internet's March 13 submission, at 17 ("unless the necessary information is made available for Commission and public scrutiny, the proposed merger cannot be said to be in the public interest"); as well as Simply Internet's February 13, 1998, Motion for Immediate Review of Non-Public Materials; etc..

As to the Joint Reply (the "Rep."), ICP was flabbergasted by, and hereby formally takes issue with, WorldCom and MCI's statement, in their Rep. at 27-28, that "[s]ome advocacy groups have, of course, filed petitions opposing the merger. The petitions, however, generally reflect particularized concerns about the effects of the merger, including its effect on the minority community. These issues are important, but... the merger creates no cause for concern." Emphasis added.

WorldCom and MCI have attempted to obscure both the level of consumer opposition to their proposed combination⁷ (by, *inter alia*, unilaterally declaring their competitors the "primary" opponents of the merger), and the public interest issues that the Commission must consider (which extend beyond the strictly competitive analysis of the Department of Justice, for example).

ICP also takes issue with WorldCom's and MCI's statement, Rep. at 96, that "Internet considerations raise issues beyond the scope of this proceeding." This is a basis WorldCom and MCI proffer for the FCC to refuse to grant a hearing on this unprecedented application, the largest proposed merger not only in telecommunications, but in U.S. history.

As set forth in ICP's January 2, 1998, Petition to Deny, the FCC should and must consider the ways in which this proposed combination would substantially lessen competition in internet as well as long distance markets.

In light of the lack of development of the factual record, particular that part of the record made available to date to the public, the FCC should be aware (and ICP hereby formally enters into the record) that ICP on January 30, 1998, asked WorldCom and MCI to provide certain information in this regard. ICP's request was explicitly made in connection with the New York State Public Service Commission proceeding (Case 97-C-1804), but is obviously relevant to

⁷ Beyond the petitions to deny and comments that have been filed with the FCC, the FCC should be aware, *inter alia*, of the protests filed with the California Public Utilities Commission, and ICP's intervention in opposition to the proposal before the New York State Public Service Commission (see PSC Order of January 26, 1998, granting ICP's motion for intervention in Case 97-C-1804).

this FCC proceeding.⁸ Both WorldCom and MCI refused to provide this information. Here are some of ICP's questions (which WorldCom and MCI have refused to answer) -- ICP asks the Commission to direct WorldCom and MCI to provide this information, to ICP and into the record in this proceeding (as well as providing the other information requested *supra*):

1. Please describe WorldCom's, MCI's and/or the proposed MCI WorldCom's plans to preserve and enhance universal service in low or moderate income ("LMI") or predominantly Latino or African American communities in New York State, as this relates to telephone and particularly internet / information technology infrastructure and retail service/access.

2. Please describe WorldCom's, MCI's and/or the proposed MCI WorldCom's plans and timetables to enter local residential markets in New York State, and internet services therein, particularly in low or moderate income ("LMI") or predominantly Latino or African American communities in New York State.

3. Please describe UUNet's policy as to pricing and the disclosure thereof, for backbone peering arrangements / agreements.

4. Please describe current and planned operational and technical standard requirements for UUNet and/or any proposed successor, including but not limited to in the areas of routing protocol architecture, security and packet-counting architecture.

5. Please describe WorldCom, MCI's and/or the proposed MCI WorldCom's plans to build switches in LMI or minority communities in New York State.

[6]. Please describe in detail the basis of (and any plans or timelines for) WorldCom's and MCI's statement in their January 15 Opposition to ICP's Motion to

⁸ Beyond the obvious relevance demonstrated by the questions themselves, the FCC's Bell Atlantic - NYNEX Order (full citation in ICP's Jan. 2, 1998, Petition to Deny) explicitly encouraged the consideration of antitrust issues in state regulatory reviews of proposed telecommunications mergers.

Intervene (at 6) that "the combination of WorldCom and MCI... will increase... the ability to offer competitive local and toll service to all residential customers...As the strengthened WorldCom/MCI is able to expand the availability of competitive local service to residential customers, the presence of competition will result in lower cost, more efficient service, and more customer choice. Competition will develop for the universal service payments now available only to monopoly LECs and, with that competition, funds available for universal service will be more effective in assuring the availability of universal service for all residential customers."

[7]. Please provide documents that discuss, analyze, describe or relate to MCI's decision (announced January 22, 1998) to abandon its plans to resell local residential phone service and to focus on providing local business service through its own networks.

WorldCom's and MCI's outright refusal to provide information responsive to these public interest / antitrust questions, either in response to ICP's January 30, 1998, request, or, essentially, in their January 26, 1998, purported Reply to the FCC, makes the need for an FCC evidentiary hearing in this proceeding all the more clear. On the current record, these applications must be denied.

* * *

For the foregoing reasons, on the current record, WorldCom's and MCI's applications, and this proposed combination, should be denied by the Commission.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Matthew Lee, do hereby certify that true and correct copies of the foregoing Petition to Deny were either (1) sent by first-class, postage prepaid mail, or (2) hand-delivered ("*") this 20th day of March, 1998, to the following:

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